RECOVERY OF MONEY PAID ON A FORGED INSTRUMENT.—In the first cases at common law dealing with payments made by mistake, the distinction now generally established between errors of law and of fact was not recognized.[1] The modern doctrine denying recovery in the former class of cases is supported on the reasoning that since every man is presumed to know the law, the payment could only have been voluntary,[2] but such a presumption appears obviously unsound.[3] Furthermore, though public policy indeed demands that ignorance of law should not excuse the commission of a wrong,[4] it in no degree requires the existence of this presumption of knowledge of the law. This conclusion is borne out by the fact that neither mistake of foreign law,[5] nor mistake of domestic law by a foreigner,[6] nor mistake of law resulting in payment to the court or its officer,[7] is a bar to recovery. It would seem, then, that just as in cases of mistake of fact the ground of recovery is unjust enrichment,[8] so when the mistake is one of law money paid should be recoverable whenever *ex aequo et bono* the plaintiff is entitled thereto.[9]

In the application of the above principle, the propriety of the recovery depends primarily on whether the party who has received the payment has innocently changed his position in reliance thereon, since if he has not suffered any detriment there is no equity in allowing him to retain the money or benefit secured.[10] Thus if the plaintiff has paid because of a mistaken belief that he was under obligation to do so,[11] or because he erroneously supposed that he was purchasing contract rights,[12] it is clearly unconscientious for the defendant to retain the money. In all cases, however, the mistake must obviously be as to a material fact, a fact such that if true the plaintiff would actually have been bound to make the payment, or would have secured the desired consideration. Otherwise, it is clear that except for a mistake of law the payment is voluntary,[13] and therefore of course cannot be recovered.[14] On similar equitable principles it is apparent that any

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[1]Hewer *v.* Bartholomew (1597) Cro. Eliz. 614.

[2]Bilbie *v.* Lumley (1802) 2 East. 469; Vanderbeck *v.* City of Rochester (1890) 122 N. Y. 285; Waples *v.* U. S. (1884) 110 U. S. 630.

[3]Comw. *v.* Stebbins (Mass. 1857) 8 Gray 492; Queen *v.* Tewkesbury (1868) L. R. 3 Q. B. 628.

[4]Rex *v.* Esop (1836) 7 C. & P. 456.

[5]Haven *v.* Foster (Mass. 1829) 9 Pick. 112.

[6]Bank of Chillicothe *v.* Dodge (N. Y. 1850) 8 Barb. 233; Vinal *v.* Continental Construction Co. (N. Y. 1889) 53 Hun 247.

[7]*Ex parte* James (1874) L. R. 9 Ch. App. 609; *Ex parte* Simmonds (1885) L. R. 16 Q. B. 308.

[8]Moses *v.* Macferlan (1760) 2 Burr. 1005.

[9]See *Ex parte* Simmonds *supra.*

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[11]Milnes *v.* Duncan (1827) 6 B. & C. 671; Mills *v.* Alderbury Union (1849) 3 Exch. 590.

[12]Feise *v.* Parkinson (1812) 4 Taunt. 640; McDonald *v.* Lynch (1875) 59 Mo. 350; Shearer *v.* Fowler (1810) 7 Mass. 31.

[13]Needles *v.* Burk (1884) 81 Mo. 569.

[14]Windbiel *v.* Carroll (N. Y. 1878) 16 Hun 101; Frambers *v.* Risk (1877) 2 Ill. 499.

moral obligation upon the plaintiff to make the payment,[15] or receipt of value in return for it,[16] will prevent recovery, and furthermore that the plaintiff's equity is not affected by any negligence on his part unless the defendant is injured thereby.[17] A question involving the application of the foregoing principles was presented in the case of *American Express Co.* v. *State National Bank* (Okla. 1911) 113 Pac. 711. The drawee of a check, the signature of which was forged, sought to recover from an innocent holder for value the amount paid to him on the check in the belief that it was genuine. It was decided that since the mistake was one of fact and had not prejudiced the defendant, the plaintiff should succeed.

This doctrine has found comparatively little support among the authorities. In the early case of *Price* v. *Neal*[18] Lord Mansfield, in deciding that under such circumstances the drawee cannot recover, established a rule which has been very generally followed,[19] and which is based in subsequent decisions on three different theories. Thus, it is said that the drawee is conclusively presumed to know the drawer's signature, and therefore may not rely on the mistake.[20] Such a presumption, however, which results simply in rendering the question of the drawee's knowledge irrelevant, finds its only conceivable justification in an argument of public policy,[21] which, in view of the established rule that the drawee may recover where only an endorsement[22] or a part of the body of the instrument[23] is forged, is not convincing. Again, it is urged in some cases that the plaintiff was negligent in making the payment.[24] If this were the true ground, however, it would constitute an exception to the well settled rule that the plaintiff's negligence is not a defence,[25] and furthermore, evidence to exonerate the plaintiff by showing the perfection of the forgery would be competent. It seems well settled, however, that such evidence is inadmissible.[26] A third theory has been suggested as furnishing not only the justification for the doctrine of *Price* v. *Neal,* but also the *ratio decidendi* in two other common cases of mistake of fact. Where a drawee bank pays a *bona fide* holder for value upon a check under the erroneous

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[15]Farmer *v.* Arundel (1772) 2 Wm. Bl. 824; Munt *v.* Stokes (1792) 4 D. & E. 561.

[16]Lemans *v.* Wiley (1883) 92 Ind. 436.

[17]Kelly *v.* Solari (1841) 9 M. & W. 53; Appleton Bank *v.* McGilvray (Mass. 1885) 4 Gray 518; Lawrence *v.* American Nat. Bank (1873) 54 N. Y. 432.

[18](1762) 3 Burr. 1354.

[19]Bank of the U. S. *v.* Bank of Georgia (1825) 10 Wheat. 333; First Nat. Bank of Quincy *v.* Ricker (1874) 71 Ill. 439; Nat. Bank of the Comw. *v.* Grocers' Nat. Bank (N. Y. 1867) 35 How. Pr. 412; Commercial Nat. Bank *v.* First Nat. Bank (1868) 30 Md. 11.

[20]Ames, The Doctrine of Price *v.* Neal, 4 Harv. L. Rev. 297, 298.

[21]Germania Bank *v.* Boutell (1895) 60 Minn. 189; Bank of St. Albans *v.* Farmers' and Mechanics' Bank (1838) 10 Vt. 141; First Nat. Bank of Quincy *v.* Ricker *supra.*

[22]Smith *v.* Chester (1787) 1 D. & E. 654.

[23]Bank of Commerce *v.* Union Bank (1850) 3 N. Y. 230.

[24]Smith *v.* Mercer (1815) 6 Taunt. 76; Commercial Nat. Bank *v.* First Nat. Bank *supra.*

[25]See note 17.

[26]Ames, The Doctrine of Price *v.* Neal *supra.*

impression that the drawer's funds are sufficient,[27] it is said that since both parties have been similarly deceived and are both alike innocent, the equities are equal and the defendant's legal title should prevail.[28] In like manner, where an obligor pays the assignee for value of a claim which both believe to be valid,[29] the same reasoning has been employed to justify the denial of a recovery.[30] The class of decisions last mentioned, however, do not seem to sustain this doctrine, but are rested rather on the theory that the payment is in effect by the plaintiff to the assignor of the claim, and by him to the assignee. In this view the plaintiff's rights are properly restricted to a recovery against the assignor.[31] Moreover in the former case supposed, it would seem that the drawee secured by his payment exactly what it was his intention to obtain, a right against the drawer's deposits. If this is so, the mere mistake in the value of that right is of course, in the absence of fraud, no ground of recovery.[32] In the principal case, however, the facts are susceptible of no such distinctions as those just mentioned, and although the doctrine of equal equities is squarely presented, it is difficult even here to find room for its application. It has never been held to govern in the case of the purchase of a forged instrument by another than the drawee,[33] and there appears to be no distinction in principle when the latter is the party concerned. In both instances alike the payment is made under the mistaken belief that a right is thereby secured against the maker, and further, the fact that in each case the defendant's equity arises on his purchase of the instrument, while the plaintiff's is created only on his payment to the defendant, would appear to render it improper to weigh these equities one against the other. Accordingly it seems that the doctrine of the principal case is preferable to that of *Price* v. *Neal*.[34]

RIGHTS AND LIABILITIES OF AN INFANT PARTNER.—Since the ancient common law, infants have been regarded as wards of the court, and their interests watched and their rights protected with jealous care. That they might not be the prey of scheming men nor of their own indiscretion, their ability to convey their property or contract away their volition was closely circumscribed. Thus the early tendency was to treat all contracts of an infant as binding on neither party and incapable of ratification,[1] and even when the rigor of this rule was modified to the extent that the infant's agreements were held merely

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[27]Chambers *v.* Miller (1862) 13 C. B. [N. S.] 125.

[28]Ames, The Doctrine of Price *v.* Neal *supra.*

[29]Abbott *v.* Merchants' Ins. Co. (1881) 131 Mass. 397.

[30]Ames, The Doctrine of Price *v.* Neal *supra.*

[31]Abbott *v.* Merchants' Ins. Co. *supra.*

[32]Badeau *v.* U. S. (1888) 130 U. S. 439; Taylor *v.* Hare (1805) 1 B. & P. [N. R.] 260.

[33]Jones *v.* Ryde (1848) 5 Taunt. 488; Markle *v.* Hatfield (N. Y. 1807) 2 Johns. 455; Young *v.* Adams (1810) 6 Mass. 182.

[34]First Nat. Bauk *v.* Bank of Windmere (1906) 15 N. D. 299; McKleroy & Bradford *v.* Southern Bank of Kentucky (La. 1859) 74 Am. Dec. 438.

[1]See *in re* Huntenburg (1907) 153 Fed. 768.